

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

18th Congress
First Regular Session

HOUSE BILL NO. 260



Introduced by Hon. Josephine Y. Ramirez Sato

EXPLANATORY NOTE

The Philippine news media will always have reports of species being poached or smuggled out of the country in order to be sold – be it the cockatoo birds and pangolins from Palawan and before that, in 2011, black corals, some twenty containers full of them, stopped in Zamboanga port.

And we can further go back in time on various Philippine biological resources that were taken from us – medicinal plants from Coron, Palawan, soil samples from Panay Island, mollusk species from Balicasag Island. There was also a reported research group that tried to get blood samples of Aetas, perhaps to explore why most of them were resistant to tuberculosis, but these were rejected by the NGO that helped these communities.

Actually there are a lot more, of reports of takings of biological resources, of indigenous and local communities who entertained researchers who went to their areas to document their traditional knowledge of biodiversity.

Getting a sense of these reports, you will realize that along with actual acts of poaching of our biological resources, there is also a less-noticed part of taking of these resources, but from way back this was called biopiracy.

These are the instances where Philippine biological and genetic resources were either taken from our shores or the knowledge by our indigenous peoples and local communities of some unique properties of our plants or animals were further developed, and they are patented.

When these patented natural compounds get further developed into useful products in the market that are commercialized, some become successful, some don't but most of these things we have no idea have happened and ultimately the benefits from these resources do not immediately come back to the country.

Take for example the plant *banaba* or what is scientifically called *Lagerstroemia speciosa*. When one takes a simple patent search on the internet on this species, one can see that there are numerous patents and patent applications to the active compounds of this plant, which by way is not entirely endemic to the Philippines but is also found in other countries of Southeast Asia.

There is even a dedicated website <http://tgs.freshpatents.com/Banaba-bx1.php>, that tracks the patent applications of mostly foreign researchers on the beneficial properties of this plant, a sample of which include the following :

- a) Dietary supplement for use in a weight loss program
- b) Dietary therapeutic composition for ameliorating disease symptoms and conditions associated with diabetes
- c) Compositions for preventing and reducing delayed onset muscle soreness

The Philippines is a megadiverse country, a country with high endemism, where most of the species found in its territory cannot be found anywhere else in the world.

From what we submitted in 2009 to the United Nations Convention on Biological Diversity as our 4th National Report, species endemism is very high covering at least 25% of plant genera and 49% of terrestrial wildlife; we are ranked

4th in bird endemism; 5th in the number of plant species and we hold 5% of the world's flora.

This proposed measure is part of the Philippines' continuing efforts in strengthening its rules and regulations on access to Philippine genetic resources and the indigenous knowledge systems and practices including the associated traditional knowledge therein or the so-called access and benefit-sharing or ABS regulations.

Being a country with unique biodiversity, we haven't even completed our inventory of what we have, and judging at the rate of what our researchers discover and what current biological diversity is lost through human interventions, we are running against time.

A 2008 Technical Paper of the Convention on Biological Diversity on Access and Benefit-Sharing : *Trends in Partnerships Across Sectors* show the following US \$ 896.8 billion market value per sector in 2006 broken down as follows :

- a) pharmaceutical industry – US\$ 643 billion;
- b) biotechnology industry (pharmaceutical, agricultural and industrial process technology) – US \$70 billion;
- c) seed, crop protection and plant biotechnology industry – US\$ 30 billion;
- d) ornamental horticulture (live trees, plants, bulbs, roots, cut flowers and foliage) - US\$ 14,386 million;
- e) botanicals (herbal dietary supplements) – US\$ 21.8 billion (2005 figures)
- f) herbal personal care and cosmetic sector – US 12 billion (2005 figures)
- g) 'healthy foods' (functional foods, natural and organic foods and "lesser evil" foods) – US market value alone is US\$ 120 billion

With just a fraction of this estimated economic value being shared to developing countries from which most of these genetic resources have come from, there is now an opportunity to strengthen the implementation of existing ABS regulations in countries where they have them, so that more countries get benefits if the genetic resources coming from their jurisdictions are utilized by industry.

This opportunity is provided by the international instrument adopted in Nagoya, Japan last October 2010, during the 10th Meeting of the Conference of the Parties to the Convention on Biological Diversity.

This international instrument, called the Nagoya Protocol will go a long way in tracking the way genetic resources are used, enabling provider countries to claim benefits from the use of their resources and therefore generating money not only for conservation of the remaining patches of biological diversity that we have but also money for the well-being of the indigenous and local communities of the developing and least developing countries of the world.

This will also generate funds so countries on their own can take steps to support their attainment of the Millennium Development Goals which is currently beset by lack of actual money being put forward by the donor governments.

This proposed measure in the implementing legislation to enable the Philippines to fully avail of the benefits of the provisions of the Nagoya Protocol, after it has acceded to it, in the usual manner of taking on obligations from an international instrument on which it had a part in negotiating.

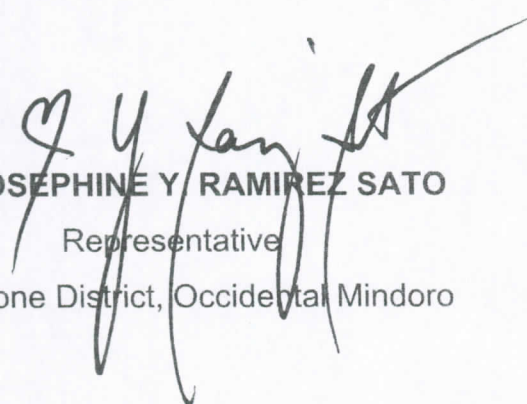
If the use of biodiversity is likened to mining especially through what is called biodiversity prospecting, at least the promise of benefits that can be secured from the use of the biological resources can be extended even many years after the actual resources has been collected, the obligation to share benefits also includes the various derivatives and products arising from the original specimens initially collected, depending on how the source country can negotiate the terms and conditions of the access to the biological resources, the authority to do so is lodged by the Convention on Biological Diversity as part of the sovereign rights of states to their natural resources. Part of the benefits that can be secured include technology transfer including through, among others, preferential and concessional terms for technology capacity building.

Another important highlight of the ABS Protocol is to show to the world that "another knowledge is possible", especially when it comes to how the biological resources are utilized, nurtured and conserved by the indigenous peoples and local communities of the world.

The Philippines, with its 110 recognized indigenous peoples as set by its National Commission on Indigenous Peoples, shows how this is done by recognizing the ways and approaches of these communities as another means of how to conserve, protect and maintain looking these resources. If we go back to the examples of all those specimens taken out from our country, perhaps if we were able to follow through how they were developed and eventually commercialized, maybe just one of them may be a good basis for one thriving industry.

The proposed measure also ensures that the customary laws as well as the community protocols of indigenous and local communities, where available, will also be taken into account in discussions relating to the access and benefit-sharing from the utilization of indigenous knowledge systems and practices including the associated traditional knowledge of the genetic resources.

Given the potential benefits this measure will give to the country, this proposed measure should be considered and approved by the House of Representatives with all deliberate dispatch.



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**AN ACT STRENGTHENING THE NATIONAL POLICY ON ACCESS,
AND BENEFIT-SHARING FROM THE UTILIZATION OF
PHILIPPINE GENETIC RESOURCES**

Section 1. **Short Title** – This Act shall be known as the "Philippine Genetic Resources Access and Benefit-Sharing Act" or "PGRABS Act".

Sec. 2. **Declaration of Policy** – It is the policy of the State to ensure the fair and equitable sharing of benefits arising from the utilization of all genetic resources in the country to generate wealth and alleviate poverty. Towards this end, the State shall secure the necessary means to pursue the strategic programs and initiatives on the conservation and sustainable use of biological diversity through the conduct of scientific research, enabling them to facilitate faster regulatory approvals from concerned key agencies. Moreover, the State shall provide the necessary support and incentive for investments to indigenous and local communities on the land/field where the genetic resources were collected.

Sec. 3. **Scope.** This Act shall apply to the Philippine genetic resources, whether found in or originating from Philippine territory and areas where the country

enjoys sovereign rights and jurisdiction, originating from the same or exported to other countries; and genetic resources originating from other countries and imported into the Philippines for development and utilization.

Sec. 4. Definition of Terms – As used in this Act:

- a. *Access* refers to the collection, taking and gathering of genetic resources from the field, in order that they may be utilized for further academic or scientific research and bioprospecting; this also includes the conduct of field research, interviews and surveys involving the indigenous knowledge systems and practices including the associated traditional knowledge of indigenous and local communities in the Philippines;
- b. *Biopiracy* refers to the unethical or unlawful appropriation or commercial exploitation of biological materials such as medicinal plant extracts that are native to a particular country or territory without providing fair financial compensation to the people of government of that country or territory;
- c. *Bioprospecting* refers to the systematic search for biochemical and genetic information in nature in order to develop commercially-valuable products for pharmaceutical, agricultural, cosmetic and other applications;
- d. *Biotechnology* refers to any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;
- e. *Clearing house* refers to the platform for exchanging information on access and benefit-sharing established by the Nagoya Protocol on Access To Genetic Resources And The Fair And Equitable Sharing of Benefits Arising From Their Utilization To The Convention On Biological Diversity, hereinafter referred as the Nagoya Protocol as part of the clearing-house mechanism of the 1992 Convention on Biological Diversity;
- f. *Derivatives* refer to a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity;

- g. *Fair and equitable benefit-sharing* refers to the appropriate benefits that may be derived by the Philippines as a country or its researchers, taking into account the level of effort applied to secure the resources and would take into account the country's current socio-economic and cultural standing;
- h. *Genetic material* refers to any material of plant, animal, microbial or other origin containing functional units of heredity;
- i. *Genetic resources* refer to genetic material of actual or potential value;
- j. *Utilization of genetic resources* refers to the conduct of research and development activities on genetic and/or biochemical composition of genetic resources, including the application of biotechnology as defined in Article 2 of the United Nations Convention on Biodiversity (UN CBD).

Sec. 5. Policy Framework on Access and Benefit-sharing from the Utilization of Philippine Genetic Resources and Bioprospecting. - The policy framework on access and benefit-sharing from the utilization of genetic resources institutionalized in this Act, implements the Philippine commitment to the Nagoya Protocol with some key changes in specific policy areas relating to access to genetic resources, compliance mechanisms to ensure that similar legislation or policy relating to access and benefit-sharing arising from the utilization of genetic resources from another country used in the Philippines are respected and implemented. The tracking and monitoring mechanisms, traditional knowledge associated with genetic resources, capacity-building and technology transfer as well as the special mandates of identified government agencies are also amended to fully implement the policy established in this Act.

Sec. 6. Creation and Composition of the Inter-Agency Committee on Genetic Resources and Associated Traditional Knowledge. - There is hereby created an Inter-Agency Committee on Genetic Resources and Associated Traditional Knowledge hereinafter referred to as the Inter-Agency Committee, to harmonize, integrate, enhance, implement and monitor compliance with treaty, statutory and regulatory provisions on access and benefit sharing (ABS) and utilization of Philippine genetic resources.

The Inter-Agency Committee shall be composed of a Chairperson from the Department of Environment and Natural Resources (DENR) and a Co-Chairperson from the Department of Agriculture (DA).

The Inter-Agency Committee shall be composed of the following offices:

A. Department of Environment and Natural Resources (DENR)

1. Biodiversity Management Bureau (BMB)
2. Ecosystems Research and Development Bureau (ERDB)
3. Palawan Council for Sustainable Development (PCSD)

B. Department of Agriculture (DA)

1. Bureau of Fisheries and Aquatic Resources (BFAR)
2. Bureau of Animal Industry (BAI)
3. Bureau of Plant Industry (BPI)

C. Department of Science and Technology (DOST)

1. Philippine Council for Health Research and Development (PCHRD)
2. Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development (PCAARRD)

D. Department of Health (DOH)

- Philippine Institute of Traditional and Alternative Health Care (PITAHC)

E. Department of Foreign Affairs (DFA)

F. Department of Justice (DOJ)

G. Department of the Interior and Local Government (DILG)

H. National Commission on Indigenous Peoples (NCIP)

I. Intellectual Property Office of the Philippines (IPOPHIL)

J. National Museum of the Philippines (NM)

K. University of the Philippines (UP) System

Each member Department of the Inter-Agency Committee shall designate a permanent representative with the rank of Undersecretary or Assistant Secretary. Member bureaus and offices shall be represented by their respective Directors and heads of office.

The Inter-Agency Committee shall be supported by a secretariat to be headed jointly by the representatives of the BMB and ERDB.

Sec. 7. Powers and Duties of the Inter-Agency Committee. - The Inter-agency Committee shall have the power to issue rules/guidelines pertaining to the access, benefit-sharing and utilization of Philippine genetic resources, the grant of incentives under existing laws, the third-party use in any mutually agreed terms or agreements relating to access and benefit sharing involving genetic resources, and the standard procedures and process flow of national checkpoint agencies, among others. It shall likewise be responsible for the following:

- a. Designation of a checkpoint or tracking mechanism to be set up by the pertinent government agency at any stage of research, development, innovation, pre-commercialization and commercialization of genetic resources and its derivatives.
- b. Establishment of the Philippine Clearing House and the formulation of the Philippine Clearing House Mechanism which shall serve as a means for sharing of information related to access and benefit-sharing and shall provide access to information made available by each party to the Nagoya Protocol relevant to the implementation of the same;
- c. Creation of appropriate sub-committees to handle specific concerns such as inventory of genetic resources, ABS compliance, monitoring, wealth creation, communication, capacity building and technology transfer;
- d. Participation in the deliberations of civil society organizations, indigenous peoples' organizations, private sector and members of the academe;

- e. Conduct of analysis and monitoring activities on the latest technological developments including digital sequencing information.
- f. Establishment of a national inventory of genetic resources within one year from the adoption of the implementing guidelines of this Act, prioritizing those with potential commercial application;
- g. Tracking and monitoring of the mechanism of biodiversity resources including genetic/deoxyribonucleic acid (DNA) characterization of genetic resources and other living organisms to enhance transparency of the same;
- h. Strict application of the guidelines, processes and protocols on the utilization of traditional knowledge associated with genetic resources as well as applicable customary laws and community protocols of indigenous peoples and local communities, particularly in securing free prior and informed consent; and
- i. Implementation of the appropriate capacity building programs in support of existing and future policies for the development of a sound and viable technological and scientific base for the access, benefit-sharing and utilization of genetic resources;

Sec. 8. Designation of National Focal Point and Competent National Authorities. - The Biodiversity Management Bureau (BMB) of DENR shall continue to be the national focal authority on access and benefit sharing. The DENR, DA, NCIP and PCSO are likewise designated competent national agencies for access and benefit-sharing and for ensuring Philippine compliance with the obligations under the CBD and the Nagoya Protocol.

Sec. 9. Coordination and Cooperation with Other National Government Agencies. - To ensure compliance with the rules or guidelines on access, benefit-sharing and utilization of genetic resources, policy and administrative measures shall be adopted by the national government agencies to notify the ABS Clearing-House created through the Philippine Clearing House mechanism. All national government agencies with research and development functions relating to genetic resources shall provide the Inter-Agency Committee with the relevant information on the status

of researches with potential commercial application and prioritize studies aimed at better understanding genetic resources or in developing commercial products through bio-technology or through other means.

Sec. 10. Access to Information. - Access to information collected by virtue of this Act as well as to government research data used as basis for policy development shall be in accordance with the source agency's Freedom of Information (FOI) manual prepared and adopted in accordance with Executive Order No. 2, series of 2016.

Sec. 11. Access to Genetic Resources. - The existing policies on access to genetic resources as currently implemented by the appropriate government agencies under Republic Act 9147, otherwise known as the "Wildlife Resources, Conservation and Protection Act" shall continue to exist and be implemented for all purposes; *Provided That*, to facilitate harmonization of these policies with the Nagoya Protocol, the following shall also be implemented :

- a. Any existing Philippine government agency requiring prior informed consent before access to genetic resources is granted shall provide for the issuance at the time of access an evidence of the decision to grant prior informed consent and the establishment of the mutually agreed terms or the agreement relating to access and benefit-sharing involving the genetic resource. These agencies shall also take administrative and policy measures to notify the ABS Clearinghouse of the United Nations Convention on Biological Diversity of such issuances;
- b. Any mutually agreed term or agreement relating to access and benefit-sharing involving the genetic resource established between the agency or community concerned shall provide for clear provisions on third-party use including the change of intent relating to the utilization of this genetic resource from its non-commercial or scientific stage. Any existing implementing regulations of existing agencies for this purpose shall be amended and updated accordingly.

Sec. 12. Matters Relating to the Utilization of Associated Traditional Knowledge Associated with Genetic Resources - Whenever the indigenous

knowledge systems and practices including the traditional knowledge associated with genetic resources of indigenous and local communities are utilized, the following shall be implemented by the appropriate agencies, particularly the National Commission on Indigenous Peoples, the Palawan Council for Sustainable Development as well as the Philippine Institute for Traditional and Alternative Health Care:

- a. The customary laws as well as the community protocols of indigenous and local communities, where available, will apply at the first instance, in matters relating to access and benefit-sharing from the utilization of indigenous knowledge systems and practices including the traditional knowledge associated with genetic resources;
- b. Establishment of mechanisms with the effective participation of indigenous and local communities to inform users of their obligations as these relates to the utilization of indigenous knowledge systems and practices including traditional knowledge associated with genetic resources;
- c. Establishment of mechanisms to indigenous and local communities to develop their own community protocols, minimum requirements for mutually agreed terms and model contractual clauses;
- d. The customary use of indigenous knowledge systems and practices including traditional knowledge associated with genetic resources by the indigenous and local communities themselves shall continue to be respected; *Provided*, That this principle shall not be recognized if asserted by non-indigenous and local communities.

Sec. 13. **Voluntary Benefit-Sharing Mechanisms** - There shall be established a voluntary benefit-sharing mechanism in cases where it is not possible to secure prior informed consent and the researcher and the partner or collaborating institution will commit to provide a minimum level of benefits that may be derived from the utilization of the genetic resources and/or the indigenous knowledge systems or practices, including the associated traditional knowledge therein and as

the utilization progresses from research, development, innovation, pre-commercialization and commercialization. The concerned implementing agencies mandated by this Act shall conduct the necessary consultations to determine the levels of these benefits, which will be adjusted from time to time depending on the level of advancement of researches in these activities.

Sec. 14. Penalties - Except in relation to plant genetic resources for food and agriculture covered under the provisions of the international treaty on plant genetic resources for food and agriculture, including the Multilateral System of Access and Benefit-sharing and its Standard Material Transfer Agreement (SMTA), specifically Articles 7 and 8 of the SMTA, the user of genetic resources who does not comply with the provisions of this Act, including any relevant administrative issuance that may be issued by the appropriate agencies as indicated by this Act, shall be penalized with the crime of biopiracy and subject to a penalty imprisonment of six years and one day up to eight years, and a fine of not less than Five hundred thousand pesos, as may be determined by the appropriate court.

Sec. 15. Appropriations. - All concerned government agencies included in the Inter-Agency Committee shall allocate necessary funds for the implementation of this Act in accordance with the regular government budget procedures, for the first year of implementation of this Act. For the subsequent years, agencies in the Inter-Agency Committee shall include in their respective programs funding for the implementation of this Act which shall be included in the annual General Appropriations Act.

Sec. 16. Implementing Rules and Regulations - Within six (6) months from the effectivity of this Act, the DENR and the DA as co-chairpersons of the Inter-Agency Committee shall issue the Implementing Rules and Regulations with the Department of Environment and Natural Resources as the lead implementors of this Act.

Sec. 17. Separability Clause - In case any provision of this Act is found to be unconstitutional upon final declaration by the appropriate Court, the other provisions not so declared unconstitutional or unaffected by the declaration shall remain valid

and effective and shall continue to be implemented by the Department of Environment and Natural Resources and other relevant agencies.

Sec. 18. **Effectivity.** - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,